

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 15 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

RAIJIBHAI HAMIRBHAI PADHIYAR

Versus

STATE OF GUJARAT

Appearance:

MS BANNA S DUTTA, Advocate, appointed for appellant
MR. Y.F. MEHTA, Addl. P.P. for the respondent.

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

Date of decision: 30/01/97

ORAL JUDGEMENT (per N.J. Pandya,J)

The accused appellant came to be convicted for offence under Section 17 of the Narcotic Drugs and Psychotropic Substances Act, 1985 by the learned Additional Sessions Judge, Baroda in Sessions Case No. 162 of 1989 on 29.11.1990 and was awarded ten years rigorous imprisonment and fine of Rs. 1 lakh (Rupees one

lakh) and to undergo two years rigorous imprisonment in default of fine of Rs. 1 lakh.

2. The incident happened on 21.2.1989. On that day the police party went for raiding a gambling den where one of the participants in the game was found with a small quantity of opium. From him information was received that it is the present accused-appellant that was selling the opium. Therefore, the same police party carried out raid at his shop.

3. The main objection taken in the matter is with regard to the prosecution having failed to explain the delay in sending the muddamal for analysis to the laboratory. The seizure is of 21.2.1989 and the article is sent to the laboratory on 21.4.1989. At least this is a date to be found in the laboratory receipt Exh. 12 in the trial court record. In the said receipt it is stated that the article was received on that date.

4. In the trial court P.S.I. Mr. Chauhan has been examined and so was P.S.I. Kashirao. Neither of them and more particularly Mr. Chauhan who in his examination-in-chief claimed to have made arrangement for sending the article for analysis have cared to say specifically about the date on which the article was sent much less therefore there can be any details as to how the article was dealt with from the date of seizure till the date of sending.

5. This serious lacuna on the part of the investigation agency, in our opinion, would vitally affect prosecution. The prosecution, in our opinion, has failed to make out that what was seized has in fact been sent. The laboratory report therefore becomes irrelevant. Each date's movement of the article is required to be shown and made out before the court to remove all possible doubts as to any substitution or improper handling of the article concerned. This the prosecution having failed to establish, we accept the appeal. The appeal is allowed. The order of conviction and sentence is set aside. The accused appellant is ordered to be set at liberty, if not required for any other purpose. Fine, if paid, is ordered to be refunded.

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